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No. 1196

IN THE SUPREME COURT OF THE UNITED STATES

*****

BILLY RAY VENABLE,
Appellant,

v.

THE STATE OF TEXAS,
Appellee.

*****

APPEAL FROM THE COURT OF CRIMINAL APPEALS OF THE STATE OF TEXAS AT AUSTIN, TEXAS

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JURISDICTIONAL STATEMENT

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October Term, 1965
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JURISDICTIONAL STATEMENT

Appellant appeals from a judgment of conviction of the County Criminal Court No. 3 of Dallas County, Texas rendered on February 18, 1965. Appellant submits this Jurisdictional Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The Findings of the Court of the County Criminal Court No. 3 of Dallas County, Texas are to be found, quoted in their entirety, in the opinion by Judge Woodley of the Court of Criminal Appeals of the State of Texas reported in 397 S.W.2d 231 a copy of which is appended hereto as Appendix A.

JURISDICTION

Appellant was convicted of the misdemeanor offense of driving while intoxicated under Article 802, Texas Penal Code. Punishment was assessed at three (3) days confinement in the Dallas County Jail and a fine of seventy five dollars, ($75.00). This judgment of conviction rendered on February 18, 1965 by the County Criminal Court No. 3 of Dallas County, Texas was later affirmed in an opinion delivered November 17, 1965, by the Court of Criminal Appeals of the State of Texas at Austin, Texas. A motion for rehearing was overruled, without written opinion on January 12, 1966, thus making the judgment final. Notice of appeal was filed in that court on January 24, 1966.

This appeal is brought for the purpose of enjoining the enforcement of that judgment of conviction rendered as a result of the invalid (as applied) aforementioned statute. The statute (as applied) is invalid because it is repugnant to the Federal Constitution. The jurisdiction of the Supreme Court of the United States to hear this appeal rests upon Title 28, United States Code,

Section 1257 (2). The following decisions serve to sustain the jurisdiction of the Supreme Court to review this case on direct appeal: Myles Salt Co. v. Iberia & St. M. Drainage District, 239 U.S. 478; Dahnke-Walker Milling Co., v. Bondurant, 257 U.S. 282; Lawrence v. State Tax Commission, 286 U.S. 276, 282-3.

STATUTE INVOLVED

The statute, Article 802, Texas Penal Code is found in: Volume 2, Vernon's Anno. Penal Code, page 317, and quoted verbatim as follows:

Art. 802. Driver intoxicated or under influence of intoxicating liquor

Any person who drives or operates an automobile or any other motor vehicle upon any public road or highway in this State, or upon any street or alley within the limits of an incorporated city, town or village, while such person is intoxicated or under the influence of intoxicating liquor, shall be guilty of a misdemeanor and upon conviction shall be punished by confinement in the county jail for not less than three (3) days nor more than two (2) years, and by a fine of not less than Fifty ($50.00) Dollars nor more than Five Hundred ($500.00) Dollars. Provided, however, that the presiding judge in such cases at his discretion may commute said jail sentence to a probation period of not less than six (6) months.

QUESTION PRESENTED

Whether the owner of a motor vehicle, who was neither driving nor operating it, can be validly convicted, on the theory of principals, of the misdemeanor offense under the terms of a statute proscribing driving while under the influence of intoxicating liquor, without such an application of statute being repugnant to the Federal Constitutional requirements of notice under the Sixth Amendment thereto, and of due process of law under the Fourteenth Amendment thereto.

STATEMENT

The case was tried before the Court without a jury.

The State presented a case showing that the appellant was driving the vehicle at the time in question and while under the influence of intoxicating liquor, a violation of Art. 802, supra.

The appellant defended on the ground that he was not driving the vehicle and therefor was innocent of the violation accused.

The Court found that the appellant was not driving, but, because of his ownership of the vehicle, his presence and implied consent, was guilty in any event on the theory of principals.

Appellant objected and excepted to his conviction on such a theory and raised its repugnancy to the Federal Constitution , for the first time, on appeal,having had no prior opportunity. Such an application of the aforementioned statute is invalid in the opinion of the appellant.

THE QUESTIONS ARE SUBSTANTIAL

The due process requirement of definiteness is especially important in its application to penal and criminal statutes. The legislature, in the exercise of its power to declare what shall constitute a crime or punishable conduct, has a duty to, and must inform our citizens and others, with reasonable precision, what acts it intends to prohibit, so that anyone may have a certain understandable rule of conduct and know what acts it is his duty to avoid.

In the instant case, the statute can be characterized as proscribing a "malum prohibitum". This, because it has no requirement of "criminality", scienter or knowledge; Duncan v. Commonwealth, 289 Ky. 231, 158 S.W.2d 396, 398. Statutes, "malum prohibitum", without this requirement do not admit inferences of implied statutory intent to proscribe conduct or acts other than those expressly defined by the statute itself; People v. Boxer, 24 N.Y.S.2d 628, 632; this because the conduct proscribed is always, but for the statute, lawful. State v. Trent, 122 Or. 444, 259 P. 893, 898; People v. Herbert, 6 Cal. 2d 541, 58 P.2d 909, 912. For this reason such a statute should not be used to proscribe conduct which is "malum in se", nor should such a statute admit the operation of the theory of principals, as these both are by their very nature and origins, "creatures" of criminal intent.

The substantialness of the case at bar which requires the plenary consideration of the Supreme Court, with briefs and oral argument, springs from two main sources.